

1882-021 Chancery Causes: David Ely vs. Timothy Sisk
Lee Co.

Noell, Hobbs, Blackburn, Baylor

CA-Debt
T-Property

The bill of Complaint of David Ely of said County respectfully represents, that at the May term of the Circuit Court of said County, Your Orator obtained ^{a confirmation of} judgment against Timothy Sisk of said County for the sum of \$160.00, with legal interest thereon from the 1st day of September 1850, till paid, and the Costs, amounting to \$

On said judgment, an execution issued, which was returned by the Sheriff of Lee, "no property found". Your Orator knows of no property out of which to make said debt, principle, interest and Costs, except two lots with their improvements in the Town of Jonesville, Lee County Virginia, commonly known as the Tavern property, and the lot adjoining. And known on the plan of said Town, respectively as lots No 4 Your Orator avers that his only chance to make his debt out of said Sisk is out of the said houses and lots, which can only be done by selling such portion of said property as may be necessary to make the said debt principle, interest and Costs and the Costs of this suit. He further avers that there are outstanding judgments against said Sisk to the full value of the said property, or very nearly so still unsatisfied. So that the rents and profits for five years, would not, by a good deal pay this debt together with the other judgments outstanding against him, Your Orator being therefore without an adequate remedy at Common law, and relievable only in a Court of Equity, his prayer therefore is that the said Timothy Sisk be made party Deft, to this bill, and be required to answer the several allegations

Whereof, fully, truly and Completely on oath,
as if the same had been propounded in the
form of interrogatories; that a decree be ren-
dered subjecting the said property to the pay-
ment of the said debt, principle, interest
and cost, and also the costs of this suit. That a
Commissioner be appointed to make sale of
said property, and out of the proceeds to pay
the said debt, principle, interest and costs, and
the costs of this suit. And your orator will
ever pray &c.

May the l^t Wealth's writ of Spa issue &c.

Sharp for Plff

Late clk \$12.52 (chm)
 A 15.00
 S - 1.00
 Comr. 5 25
 72
 34.49
 2.52
 37.01

33
 David Ely
 vs } Bill in Chy
 Timothy Sisk

July Rule, 1860 Bill
 filed 220 & cont'd
 Michael Deane confirmed
 April May June July Aug.
 Sept. Oct. Nov. Dec. Jan 1861
 Feb. Mar. April May Continued
 1861 June Cont'd July Continued
 " Aug. Cont'd Sept. Cont'd
 Oct. Nov. Dec. Cont'd
 1862 January Feb. March
 April May June July
 Aug. Sept. Oct. Nov. Dec. Cont'd
 1863 Jan Feb March April May
 June July Aug. Sept. Oct.
 Nov. and Dec. Continued
 1864 - Continued this year
 1865 - Continued this year
 1866 - Jan Feb. Mar. April May June
 July and Aug. Continued
 Sept. set for hearing by Compt.
 Sept. Continued
 1867 April Deane & Continued
 Sept. Deane for accounts
 1868 April Continued
 Sept. Continued
 1869 April Continued
 Sept. Continued

Chd to May 1866, in 15
 1870 May Cont'd
 " Oct. Cont'd
 1871 May. cont'd.
 " Oct. "
 1872 May "
 " Oct. "
 1873 May Deane & cont'd.
 1874. Cont'd this year.
 1875. Cont'd " "
 1876. Cont'd " "
 J. B. H. 92 etc
 6 7.56 to Aug 1879
 Orr. Cg. 2.52 July 1881
 6 1.15
 1877. Cont'd this year.
 1878. Cont'd " "
 1879. Cont'd " "
 1880. Cont'd " "
 1881. Mr. Deane, "
 1882. Mr. Deane
 " Aug. Deane &

To The Honorable John A Campbell Judge of
The Circuit Court of Lee County. The answer of
Timothy Sisk to the bill of Complaint of David Ely
exhibited in this Honorable Court against the Defendant
This Defendant after saving and reserving to himself
the benefit of all just and proper exceptions to said bill
for answer thereto saith that he hopes to be able to pay
and satisfy Complainants Claim or so much thereof
as is justly due to him without having to resort to the
proceeds rents or profits of the property of Defendant
for that purpose referred to in Complainants bill and
ought to be subjected to the payment thereof. The said
property is valuable and portions of it could not be
sold off from the Residence without a great sacrifice
to Defendants rights and interest therein. Your Respondent
would further state that the rents and profits of said
property would fully discharge said judgment of Complaint
in less than two years And Deft having fully
answered Complots bill or so much thereof as he is
advised it is material for him to answer prays to
be hence dismissed with his Costs &c

Kane & Holdway

Lee County Court

This day Timothy Sisk personally
came before the undersigned and made oath that
that the allegations contained in the foregoing answer
are true so far as they depend upon his own knowledge
and that so far as they depend upon the information
derived from others he believes them to be true Given
under my hand this 28th day of September 1866

Henry J. Morgan. Clk

Timothy Pick

add & Answer

David Ely

Old Book

450

David El
against
Timothy Sisk

plff

deft

In ch.

This Cause came on again to be heard
this day on the papers formerly read in
the Cause and the report of Commissioner
Henry J Morgan and was argued by
Counsel. On Consideration whereof it is
adjudged ordered and decreed that Commissioner
Morgan, who is hereby empowered, Summon
before him the persons who occupy the houses
and lots of the defendant Sisk in the bills
mentioned, And examine them on oath touching
the time for which they rent the said premises
from defendant, And also whether or not they
have paid him the rent agreed upon, ~~And~~
And whatever rent may be due from
the persons in possession of said premises
the said Commissioner is directed ^{from them} to collect,
and apply so much as may be necessary
to satisfy the plaintiffs claim, but should have
no rent be due from said occupants. Then
the said Commissioner is directed to rent out
the said premises after the expiration of the
present term for which they have rented from
the defendant for such length of time as
may be sufficient to satisfy the plaintiffs
claim with Costs of this Suit and
the Cause is continued.

Davida Ely

W. } Decm

Timothy Dink

Entered this 18th day of
Sept. 1867 order Book
page 499.

H. J. Morgan Clerk
to

Enter this done.

J. A. C.

Sept 18. 1867

Davice Ely - plff }
against } In ch.
Timothy Sisk - Deft }

This Cause came on this day to be heard upon the bill of the plaintiff the exhibits filed, the answer of the defendant and was argued by counsel.

And it appearing to the court that the defendant is indebted to the plaintiff in the sum of \$160.00 with interest thereon from the 1st of November 1855 till paid and the costs of

which cannot be made out of the personal effects of defendant. But defendant admits that he owns real estate

the rents whereof within the period of five years will be sufficient to pay the plaintiffs claim. An order was

made that it is adjudged ordered and decreed that the plaintiff recover against the defendant the said sum of \$160.00 with interest thereon from the 1st of November 1855 till paid and also the sum of \$

And it is further ordered that Harry J. Morgan be made a Commissioner whose duty it is to rent out the real estate

of the defendant for such period as may be sufficient to pay the plaintiffs claim and the costs of this suit

And report his action to this court and the cause is continued

David Eg
as } Secu
Timothy Sisk

Entered O.B.
Page 485 & 486

Enter this docu
J. A. C.
April 27. 1867

Commissioner's Office Louisville April 17 - 1868.

David Ely ----- Plaintiff

against

Timothy Sisk ... Defendant

} In Chancery.

The Deposition of James R. Noell and others, tenants of the defendant Sisk, taken to ascertain their respective indebtedness to the said defendant and the said Noell being sworn states. That about the month of Sept: 1867 he rented of the defendant Sisk what is known as the old Lavern property or rather a part thereof for the period of one year commencing about the 1st of Oct: 1867 for which he was to pay him \$100.⁰⁰ at the end of the year - , and he also rented one half of the little shop situated on Main street, West of the Lavern property, for the same period for which he was to pay \$15.⁰⁰ , and that he has paid the said Sisk both said sums, lacking a few dollars, probably not exceeding \$5.⁰⁰ , the precise amount not known there being some small matters unsettled as yet between him and the said defendant.

J. R. Noell

Dr. C. F. Hobbs, another tenant of the said deft being sworn states, That he rented of the deft Sisk a part of the old Lavern property known as the Johnson Room ^{for one year} Commencing about the first of April 1868 for which he

was to pay the said debt \$65.00 in Cash notes at the end of the year, subject to the following Conditions viz. The said debt. was to build a stable upon the said premises and fence in a certain square of the garden and if he failed so to do this witness was to ^{to have the privilege of} building said stable and fence and to deduct the cost thereof out of said rent.

C. F. D. O. G.

George W. Blackburn another Tenant of Defendant Sick being duly Sworn States that he last rented of the defendant Sick, the Small Shop in which he now works as a Shoemaker in Sept. 1867 for the term of One year from that date, for which he was to pay said Sick \$15.00 in work which he has accordingly paid, and for this last year he has overpaid him, but for the year previous to Sept 1867 he was indebted to said Debt a Small Sum and both of which is unsettled. Witness is of opinion that upon a fair and final Settlement of these matters between himself and Sick he is of opinion that there is nothing due the defendant or but very little, But since making the foregoing Statements from memory. Witness has examined his books and finds that the rent due said Sick from the time he first rented of him to the 15th of April 1868 amounts to \$25. And that his account against said Sick to said date amounts to \$36. leaving said Sick in his debt about \$ at said last date.

That his present Term will expire the 1st day of Sept next at which time he will owe the said Debt \$5.20 or ^{thereabouts} and further this witness saith not.

G. W. Blackburn

Robert C. Baylor clerk for Daugherty & Beatty Teneants
also of said Defendants Sisk. being first duly sworn
deposes and Says. That about the 20th day of April
1866 Elbert S. Martin rented of the defendant Sisk
the Storehouse now occupied by "Daugherty & Beatty" for
the term of twelve months, and without ~~for~~ for which
he was to pay \$100.⁰⁰ and without any further
contract continued in possession of the same until
the 23rd day of September 1867, when Daugherty &
Beatty bought out the said Elbert S. Martin and
rented the said Storehouse of the defendant Sisk.
The said Martin paid said Sisk for said
rents up to 23^d day of September 1867

By the terms of a written contract entered into be-
tween the defendant and Daugherty & Beatty, the latter
rented of the former the said Storehouse for the term
of six months with the privilege of keeping it long-
er than six months, if they so desired by paying
the said Sisk at the rates of \$100.⁰⁰ per annum.

The said Daugherty & Beatty have now been in
possession of said Storehouse near seven months
and have paid said Sisk towards the rent there
of \$75.64 being a sum more than the rent
amounts to at the present time. Should they con-
tinue in possession one year said Daugherty &
Beatty will then owe the defendant \$24.36. And
further this witness saith not.

R. C. Baylor

David Ely
vs. 3 Depositions.

Timothy Sisk

(A)

Virginia,

At a Circuit Court continued and held for Lee
County, at the Court-House thereof, on Wednesday the
18th day of September 1867.

David Ely ----- Plaintiff
 against
Timothy Sisk ----- Defendant } In Chancery.

This cause came on again to be heard this day on the
papers formerly read in the cause, and the report of Commis-
sioner Henry J. Morgan, and was argued by Counsel. On consideration
whereof it is adjudged, ordered, and decreed that Commissioner
Morgan, who is hereby empowered, summon before him the persons
who occupy the houses and lots of the defendant Sisk, in the Bill
mentioned, and examine them on oath touching the time for which
they rented the said premises from defendant and also whether or not
they have paid the rent agreed upon. And whatever rent may
be due from the persons in possession of said premises the said
Commissioner is directed to collect from them, and apply as
much as may be necessary to satisfy Plaintiff's claim, but
should no rents be due from said occupants then the said
Commissioner is directed to rent out the said premises after
the expiration of the present term for which they have rented
from the defendant for such length of time as may be suf-
ficient to satisfy the Plaintiff's claim with costs of this suit,
and the cause is continued.

A copy -

Lease-Henry J. Morgan Clerk

Messrs. Duggerty & Beatty, and James R. Nail, D.C. F. Hobbs and
George W. Blackburn Tenants of defendant Timothy Sisk you
are hereby notified that at the clerks office of the circuit
court of Lee County on Friday the 17th day of April 1868, I
will proceed to execute the foregoing decree at which time
and place you and each of you will please attend, to State
upon Oath how much if any you respectively be due the Debt
Sisk

Henry J. Morgan Clerk
April 16th 1868

Recd Copy

Copy of Decree & Notice

Timothy Sisk

We accept legal service of
the within Decree & Notice

J. R. Nail

To at 1868

Duggerty & Beatty

May 17. 6. 1868

David Ely
against
Simonds Lisk

Plaintiff
Defendants
In Chancery.

To the Hon. John A. Campbell, Judge of the Circuit Court of Lee County:— By a Decree of your Honor pronounced in the above styled Cause on the 27th day of April last, the subscriber was appointed a Commissioner and directed to rent out the real estate of the defendant for such period as may be sufficient to pay the plaintiff's claim, and the costs of this suit &c.

Your Commissioner begs leave to report that he has not complied with the said decree from the fact that the real estate of the defendant mentioned in the said decree or that part of it which would be likely to bring anything at public renting is already under lease, and your Commissioner conceives that he has not the right to interfere with the lessees thereof.

The Storehouse situated upon said real estate is rented by Capt. E. A. Martin for the sum of \$100.⁰⁰ annually. The small shop immediately East of said store, and almost joining the same is rented by James R. Noell for the sum of \$20. annually, and the first year thereof will expire on the first day of September 1867. The house or rather room formerly occupied by Peter C. Johnston and the small room immediately East of it, and the two rooms immediately over the first two, are now occupied by Dr. A. C. Price, who has rented the same of the defendant for one year which will expire on the 7th day of March 1868, for the sum of \$85.⁰⁰ payable on the last mentioned day.

The residue of said real estate, except the old

house on the hill near the Methodist Church is now occupied by William R. Graham Esq, under a sort of Contract by which he is to pay the rent thereof in repairing said property.

The old house on the hill is now occupied by Mrs. Craig, but your Commissioner is not informed as to whether she pays rent - therefore or not.

Respectfully submitted

Henry J. Morgan Comr

August 2nd 1867

David C. Clegg

as Mr. Morgan's Report

is in the Book

1867

August 3rd. Filed

H. J. Morgan Comr

Securo's Fee 75cts.

Free Bill made off

36
36
72
1/2
36
2.52

2.52

Circuit Court Clerk's Office April 17th 1868.

David Ely

Plaintiff

against

Timothy Sisk

Defendant

In Chancery.

To the Hon. John A. Campbell Judge of the Circuit Court
of Lee County.

In pursuance of a decree of your Honor entered in the above cause on the 18th day of September last I summoned before me on the 17th day of April 1868 James R. Noell, C. F. Hobbs, George W. Blackburn, and R. L. Baylor, clerk for the firm of "Daugherty & Beatty," tenants of the defendant Sisk and who occupy the houses and lots in the Bill mentioned, whom I examined in relation to the terms upon which they respectively rented from the defendant, when the same would expire, and the amount due from them respectively to the said defendant, and their statements I committed to writing, and the same is filed herewith marked (A), from which it appears that James R. Noell rented of the defendant a part of what is known as the Old Tavern property in September 1867 for the period of one year from that date, that he was to pay therefor \$100.⁰⁰ at the end of the year, and that he has paid the defendant the full amount of the rent except about \$5.⁰⁰; that C. F. Hobbs rented of the defendant for one year commencing April 1st 1868

another part of said old Tavern property for which he was to pay \$65.⁰⁰ in Cash notes at the end of the year, subject to this condition that the said defendant was to build a stable upon said premises and fence off a certain square of the garden, and if he failed so to do, the said Hobbs was to have the privilege of making said improvements and the value thereof was to be deducted out of said rent and for which rent he has as yet paid nothing; that George W. Blackburne rented of said defendant a little Shoe Shop on said premises on the first day of September 1867 for the period of one year from that date for which he was to pay the sum of \$15.⁰⁰, and that at the end of his said term he will owe the said defendant the sum of \$5.20 or thereabouts; that "Daugherty & Beatty" about the 23rd of September 1867 rented of the defendant the Storehouse upon said premises now occupied by them for the period of six months with the privilege of keeping the same longer; and that they were to pay defendant therefor at the rate of \$100.⁰⁰ per annum that up to the present time they have paid the defendant \$75.64 and that at the end of the first year, they will owe said defendant the sum of \$24.36.

It thus appears that nothing has as yet, been realized from said rents for the pay-

ment of any part of the plaintiffs' judgment. It is probable that if this proceeding had been executed soon after the rendition of this decree something might have been realized, but for a long period after the rendition of said decree the same was forgotten and overlooked by me.

The defendant insists that as the plaintiffs' judgment against him (which it is the object of this proceeding to enforce) was obtained upon an undertaking in existence long prior to the 2nd day of April 1865 that he ought, according to principles of Equity, to have the benefit of the present Stay Law, and that the rents and profits of his premises cannot be applied to the payment of the same further than to discharge two years' interest on the amount of said judgment. How this may be I am not competent to determine, and I only mention it to call the same to the attention of the Court, if your Honor has not already considered the subject. All which is respectfully submitted.

Henry J. Morgan Commr. &
April 17-1868.

David Ely

vs. 3 Commr's Report.

Timothy Bisk
Filed April 17-1868

Commr's Fee \$4.50.

Virginia.

At a Circuit Court continued and held for Lee County at the
Courthouse thereof, on Tuesday the 18th. day of September 1866.

David Ely

Complainant

against

Timothy Sisk

Defendant

In Chancery.

This suit having been pending in this Court since 1860, without
any action being had therein, It is ordered that unless the Complainant
shall proceed to prosecute this suit, the same will be dismissed at the next
term, till which time the cause is continued.

A copy

Lester

H. J. Morgan Clerk

(3)
David Ely
3
vs. } Rule in Chy.
3

Timothy Sisk.

April Term 1867.

Nov 9th 1866

Executed by delivering a
copy of the within order
to David Ely.

J. W. Orr, S. I. C.

The Commonwealth of Virginia,

TO THE SHERIFF OF LEE COUNTY, GREETING :

WE COMMAND YOU TO SUMMON

Timothy Sisk

to appear before the Judge of the Circuit Court of Lee county, at the Court House, in the Clerk's office, at

February ~~March~~ Rules next, to answer *a bill, in Chancery exhibited*
in our said Court against him by David Ely.

And have then there this writ. Witness, RICHARD M. HAMBLLEN, Clerk of our said Court, at the Court House,

this *3rd* day of ~~February~~ ^{March} *February* 18*60*, in the *8th* year of the Commonwealth.

February

R M Hamblen Clerk

S

S

David Ely
vs { Spa in Ely
Timothy Sisk

Febry Rules 1860

March Rules 1860

July 16th 1860

executed

D Patrick DS